

## STATE OF KANSAS

### BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

In the Matter of the Proposed Amendment of Permanent Kansas Administrative Regulations K.A.R. 28-19-202; 28-19-517; 28-19-720; 28-19-735; 28-19-750, and; 28-19-750a; and the proposed revocation of Kansas Administrative Regulations K.A.R. 28-19-728; 28-19-728a; 28-19-728b; 28-19-728c; 28-19-728d; 28-19-728e, and; 28-19-728f.

### REPORT OF THE HEARING OFFICER

This matter comes before Julie Coleman, hearing officer appointed by the Secretary of the Kansas Department of Health and Environment (KDHE), to consider the comments of the public regarding the proposed amendment and revocation of permanent administrative regulations.

### INTRODUCTION

Pursuant to K.S.A. 2009 Supp. 77-421, notice of the public comment period and public hearing was published in the Kansas Register on June 17, 2010. A copy of the public notice is included in this report as Attachment 1. The public hearing was conducted at 10:00 a.m. on Monday, August 30, 2010 in Room 530 of the Curtis State Office Building, 1000 SW Jackson Street, Topeka, Kansas. These regulations are promulgated under the authority of K.S.A. 65-3005(a)(1) generally, and K.S.A. 65-3024 specifically with regard to establishment of emissions fees.

The purpose of these proposed regulatory actions is to: (1) adjust emissions fees for Class I stationary pollutant sources to ensure fees support actual program costs; (2) change the annual emissions reporting date for Class I stationary sources from June 1 to April 1 of each calendar year to accommodate a change by the EPA of the state's emissions inventory reporting date; and (3) maintain the state's authority to administer federal regulations by ensuring state air quality regulations are consistent with federal requirements by incorporating changes through July 1, 2008 to the federal New Source Performance Standards, adopting by reference the provisions of 40 C.F.R. Part 61, National Emissions Standards for Hazardous Air Pollutants, through July 1, 2008, adopting by reference the provisions of 40 C.F.R. Part 63, National Emissions Standards for Hazardous Air Pollutants, through July 1, 2008, and adopting by reference 40 C.F.R. Part 65, Consolidated Federal Air Rule, through July 1, 2008. The proposed revocation of K.A.R. 28-19-728 through 28-19-728f will align Kansas air quality regulations with the vacatur of the federal Clean Air Mercury Rule.

Eight people attended the public hearing on Monday, August 30, 2010. A copy of the sign-in sheet is included in this hearing report as Attachment 2.

### SUMMARY OF THE RECORD

The hearing officer opened the public hearing with introductory remarks and called upon Bureau of Air staff member, Miles Stotts, to briefly review and discuss the proposed regulations. A copy of Mr. Stotts' testimony is included as Attachment 3. Following these remarks the hearing officer invited public comment. Comments were received from one person during the hearing. Mike Boothe, representing the Johnson County Environmental Department, commented in favor of increasing the emissions fees for Class I stationary sources. A written copy of Mr. Boothe's testimony is included as Attachment 4.

During the public comment period from June 17 to August 30, 2010, KDHE received two comment letters and one electronic mail comment submittal from the general public. Raney Gilliland, Assistant Director, Kansas Legislative Research Department, submitted a comment letter on behalf of the Joint Committee on Administrative Rules and Regulations. Written comments also were submitted by Empire District Electric Company and Hawker Beechcraft Corporation. Copies of the written comments received are included in this report as Attachment 5. No other comments were received during the public comment period.

### POST-HEARING ACTIVITIES

Following the close of the public comment period, all comments received were fully considered and, where appropriate, additional changes in the proposed regulations were made. The agency's response to the public comments, including the additional regulation changes proposed in response to the comments, is detailed in the agency's responsiveness summary, which is included in this report as Attachment 6.

### RECOMMENDATIONS

On the basis of the administrative record developed in this matter, the hearing officer finds and concludes that agency staff has met the public participation requirements for adopting the proposed amended regulations and for revoking the regulations proposed for revocation.

### FINDINGS OF FACT

1. K.S.A. 65-3005(a)(1) and K.S.A. 65-3024 authorize the Secretary of the Kansas Department of Health and Environment to adopt and amend administrative rules and regulations related to air quality generally and the establishment of emissions fees specifically.
2. Pursuant to this authority, the Secretary promulgated the regulations at issue, made a statement of the environmental benefit and economic impact of the proposed regulations,

and published notice of the public comment period and public hearing in the Kansas Register on June 17, 2010.

3. The public comment period that was established for receiving comments on the adoption of the proposed regulations was concluded and the public hearing was held on August 30, 2010.
4. Comments related to the adoption of the proposed regulations were received and all comments have been fully considered. Changes in the proposed regulations were not needed to address these comments.

### CONCLUSIONS

The hearing officer concludes that the Secretary of the Kansas Department of Health and Environment has the authority to promulgate the proposed regulations under K.S.A. 65-3005(a)(1) and K.S.A. 65-3024, and has met the requirements established under K.S.A. 2009 Supp. 77-415 *et seq.* for adopting regulations and filing these regulations with the Kansas Secretary of State.

Dated this 31<sup>st</sup> day of August, 2010.

Julie Coleman  
Hearing Officer

A handwritten signature in cursive script that reads "Julie Coleman". The signature is written in dark ink and is positioned to the right of the printed name and title.

**ATTACHMENT 1**

**KANSAS REGISTER**

**NOTICE OF HEARING**

**VOL. 29, NO. 24, JUNE 17, 2010**

State of Kansas

## Office of the State Bank Commissioner

## Special Order 2010-1

This Special Order issued this 7th day of June 2010, by the State Bank Commissioner (Commissioner).

WHEREAS, the Comptroller of Currency (OCC) has stated that a national bank is authorized, pursuant to 12 U.S.C. § 24(Seventh) and 29, 12 C.F.R. 5.36, and OCC Interpretive Letters #1118 and #1123, to exchange real property or a participation interest in real property permissibly acquired through debts previously contracted (DPC) for other types of real and personal property as long as it is done in good faith by the bank to improve its ability to recover, or otherwise limit its loss on the DPC property, and as shall be approved by the OCC; and

WHEREAS, no provision of Kansas law presently allows a Kansas state-chartered bank to exchange its participation interest in other real estate owned (OREO) acquired through DPC for an interest in a corporate entity which would manage, market and dispose of the real property; and

WHEREAS, K.S.A. 9-1715, as amended, grants the Commissioner the power to authorize Kansas state-chartered banks to engage in any activity in which such banks could engage were they operating as a national bank; and

WHEREAS, the Commissioner deems the issuance of this Special Order to be reasonably required to preserve the welfare of state banks and to promote the competitive equality of state banks and other insured depository institutions.

IT IS THEREFORE ORDERED, that subject to the limitations and conditions set forth in this Special Order, a Kansas state-chartered bank is hereby authorized to exchange its participation interest in OREO acquired through DPC for an interest in a corporate entity which will manage, market and dispose of the real property.

IT IS FURTHER ORDERED, prior to making the exchange, the bank's directors must determine that the exchange is in the best interest of the bank and would improve the ability of the bank to recover, or otherwise limit, its loss on the DPC property. The basis for such determination must be documented.

IT IS FURTHER ORDERED, prior to making the exchange, the bank must notify the Commissioner in writing of the proposed exchange, detailing the structure of the investment and the activity or activities to be conducted by the corporate entity. Also, prior to making the exchange, the bank must receive written notification of the Commissioner's approval. The approval will be based on an evaluation of the bank's risk management and measurement systems and controls to enable the bank to exchange for, hold, and dispose of the interest in the corporate entity in a safe and sound manner, and an evaluation of any other supervisory considerations relevant to the exchange; and

IT IS FURTHER ORDERED, the bank must certify that the bank's loss exposure is limited, as a legal and accounting matter, and the bank does not have open ended liability for the obligations of the corporate entity; and

IT IS FURTHER ORDERED, that the bank must certify that the enterprise in which the bank is investing agrees

to be subject to supervision and examination by the Office of the State Bank Commissioner; and

IT IS FURTHER ORDERED, the bank may not further exchange its interest in the corporate entity for an interest in any other real or personal property. Such property would be too far removed from the bank's original DPC interest in the real estate to be considered DPC property; and

IT IS FURTHER ORDERED, the bank must ensure that the corporate entity complies with K.S.A. 9-1102 and K.A.R. 17-11-17, including obtaining a current appraisal of the real estate; and

IT IS FURTHER ORDERED, consistent with the limitations in 12 U.S.C. § 29 and 12 C.F.R. Part 34, the bank must dispose of its interest in the corporate entity no later than five years from the date it initially acquired title to the OREO, unless an extension up to an additional five years is granted by the Commissioner; and

IT IS FURTHER ORDERED pursuant to K.S.A. 9-1715(b), as amended, the terms of this Special Order shall take effect on June 7, 2010, and shall remain in full force and effect until amended or revoked by the Commissioner.

IT IS SO ORDERED.

J. Thomas Thull  
State Bank Commissioner

Doc. No. 038432

State of Kansas

Department of Health  
and EnvironmentNotice of Hearing on Proposed  
Administrative Regulations

The Kansas Department of Health and Environment, Division of Environment, Bureau of Air, will conduct a public hearing at 10 a.m. Monday, August 30, in Room 530 of the Curtis State Office Building, 1000 S.W. Jackson, Topeka, to consider the adoption of proposed amended air quality regulations K.A.R. 28-19-202, 28-19-517, 28-19-720, 28-19-735, 28-19-750 and 28-19-750a, and the revocation of air quality regulations K.A.R. 28-19-728 through 28-19-728f. A summary of the proposed regulations and the estimated economic impact follows:

## Summary of Regulations:

K.A.R. 28-19-202. The proposed amendments will remove the minimum thresholds for calculating emissions fees for class I stationary sources, increase the emissions fee from \$25 per ton to \$37 per ton, and modify the late fee structure. The purpose of these changes is to ensure the fees are consistent with actual program costs. Projected shortfalls begin in fiscal year 2012 due to reductions in the amount of air pollutant emissions upon which the fees are calculated, the addition of the mercury deposition monitoring program, and decreased state general funding to the bureau.

K.A.R. 28-19-517. The proposed amendments will change the annual emissions inventory reporting date from June 1 to April 1. This change is necessary due to

(continued)



the EPA moving up the deadline by five months for states to report their emissions inventories.

**K.A.R. 28-19-720.** The proposed amendments will incorporate changes made to federal New Source Performance Standards (NSPS) through July 1, 2008. The current adoptions by reference exist only for federal NSPS rules promulgated through June 30, 2005, and specific amendments to include the federal Clean Air Mercury Rule (CAMR).

**K.A.R. 28-19-728 through 28-19-728f. Revoked.** Due to the vacatur of CAMR, the proposed revocations will align Kansas air quality regulations with federal court action.

**K.A.R. 28-19-735.** The proposed amendments will adopt by reference the provisions of 40 C.F.R. Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP), through July 1, 2008. The Part 61 hazardous air pollutant (HAP) regulations establish standards to limit the emissions of specific HAPs. The state's authority currently exists for the Part 61 rules promulgated through June 30, 2005. This proposed regulation is necessary to maintain the state's authority under existing delegation agreements to administer federal regulations and to ensure Kansas air quality regulations are consistent with federal requirements.

**K.A.R. 28-19-750.** The proposed amendments will adopt by reference the provisions of 40 C.F.R. Part 63, NESHAP, through July 1, 2008. Prior to the 1990 Clean Air Act Amendments (CAAA), section 112 of the Clean Air Act directed the EPA administrator to identify HAPs for regulation. Under this, a limited number of regulations were developed to address specific compounds originating in certain industries. In the 1990 CAAA, Congress established a list of HAPs for which the administrator was to develop controls. These are now administered under 40 C.F.R. Part 63, which the state implements in 28-19-750. The state's authority currently exists for the 40 C.F.R. Part 63 rules promulgated through June 30, 2005. This proposed regulation is necessary to maintain the state's authority under existing delegation agreements to administer federal regulations and to ensure Kansas air quality regulations are consistent with federal requirements.

**K.A.R. 28-19-750a.** The proposed amendments will adopt by reference 40 C.F.R. Part 65, Consolidated Federal Air Rule, through July 1, 2008. This federal regulation consolidates different requirements for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) to enable easier compliance for facilities. Currently, the state's authority only exists for the 40 C.F.R. Part 65 rules promulgated through June 30, 2003. This proposed regulation is necessary to maintain the state's authority under existing delegation agreements to administer federal regulations and to ensure Kansas air quality regulations are consistent with federal requirements.

#### **Economic Impact:**

**K.A.R. 28-19-202** will result in additional costs to the regulated community due to the proposed emissions fee increase. The fee increase, coupled with the removal of the minimum thresholds, is predicted to generate additional revenue of approximately \$1,750,000 to \$1,800,000, which is necessary to maintain the Kansas air quality pro-

gram. The remaining proposed regulations are not anticipated to result in additional costs to KDHE, other state agencies or the private sector because the impacted facilities are already subject to the costs associated with the current federal standards that KDHE is proposing to adopt by reference.

The time period between the publication of this notice and the scheduled hearing constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulatory action. All interested parties may submit written comments prior to 5 p.m. on the day of the hearing to Keith Weber, Kansas Department of Health and Environment, Bureau of Air, 1000 S.W. Jackson, Suite 310, Topeka, 66612, by fax to (785) 296-7455, or by e-mail to [kweber@kdheks.gov](mailto:kweber@kdheks.gov). All interested parties will be given a reasonable opportunity to present their views orally on the proposed regulatory action during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to require each participant to limit any oral presentation to five minutes.

Copies of the proposed regulations and complete economic impact and environmental benefit statements may be obtained from the KDHE Bureau of Air by contacting Keith Weber at (785) 291-3278 or [kweber@kdheks.gov](mailto:kweber@kdheks.gov). Copies also may be viewed at the following locations:

- Department of Air Quality, Unified Government of Wyandotte County - Kansas City, Kansas Health Department, 619 Ann Ave., Kansas City, Kansas
- Johnson County Environmental Department, 11811 S. Sunset, Suite 2700, Olathe
- Curtis State Office Building, 1000 S.W. Jackson, Suite 310, Topeka
- KDHE Northeast District Office, 800 W. 24th St., Lawrence
- KDHE Northwest District Office, 2301 E. 13th St., Hays
- KDHE North Central District Office, 2501 Market Place, Suite D, Salina
- KDHE South Central District Office, 130 S. Market, Suite 6050, Wichita
- KDHE Southeast District Office, 1500 W. 7th St., Chanute
- KDHE Southwest District Office, 302 W. McArthur Road, Dodge City
- Wichita-Sedgwick County Dept. of Community Health, 1900 E. 9th St., Wichita

The material also is available on the Bureau of Air's Web site at <http://www.kdheks.gov/bar/publicnotice.html>. Questions pertaining to these proposed regulations should be directed to Keith Weber.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and the economic impact and environmental benefit statements in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Keith Weber.

Roderick L. Bremby  
Secretary of Health  
and Environment

Doc. No. 038430

## **STATE OF KANSAS**

### **Department of Health and Environment**

#### **Notice of Public Hearing on Proposed Amendments to Administrative Regulations and Revocation of Existing Administrative Regulations**

The Kansas Department of Health and Environment (KDHE), Division of Environment, Bureau of Air, will conduct a public hearing on August 30, 2010, beginning at 10:00 A.M. in Room 530 of the Curtis State Office Building, located at 1000 SW Jackson Street, Topeka, Kansas. Amendments to six permanent air quality administrative regulations will be considered: K.A.R. 28-19-202, 28-19-517, 28-19-720, 28-19-735, 28-19-750, and 28-19-750a. Revocation of seven air quality administrative regulations will be considered: K.A.R. 28-19-728, 28-19-728a, 28-19-728b, 28-19-728c, 28-19-728d, 28-19-728e, and 28-19-728f.

K.A.R. 28-19-202, 28-19-517. The proposed amendments to K.A.R. 28-19-202 will remove the minimum thresholds for calculating emissions fees for class I stationary sources, increase the emissions fee from \$25 per ton to \$37 per ton, and modify the late fee structure. The purpose of these changes is to ensure the fees are consistent with actual program costs. Projected shortfalls begin in fiscal year 2012 due to reductions in the amount of air pollutant emissions upon which the fees are calculated, the addition of the mercury deposition monitoring program, and decreased State General Fund revenues to the Bureau. The proposed regulations will result in increased operating costs for all parties subject to the regulations. The fee increase, coupled with the removal of the minimum thresholds, is predicted to generate additional revenue of approximately \$1,750,000 to \$1,800,000, which is necessary to maintain the Kansas Air Quality Program. The proposed amendments to K.A.R. 28-19-517 will change the annual

emissions inventory reporting date from June 1st to April 1st. This change is necessary due to the EPA moving up the deadline by 5 months for states to report their emissions inventories.

K.A.R. 28-19-720, 28-19-728 through 28-19-728f. The proposed amendments to K.A.R. 28-19-720 will incorporate changes made to federal New Source Performance Standards (NSPS) through July 1, 2008. The current adoptions by reference in K.A.R. 28-19-720 exist only for federal NSPS rules promulgated through June 30, 2005, and specific amendments to include the federal Clean Air Mercury Rule (CAMR). Due to the vacatur of CAMR, the proposed revocation of K.A.R. 28-19-728 through K.A.R. 28-19-728f will align Kansas Air Quality Regulations with this federal court action. There are no anticipated additional costs to the regulated community as a result of these amendments.

K.A.R. 28-19-735, 28-19-750, 28-19-750a. The proposed amendments to these regulations will incorporate changes made to portions of the Code of Federal Regulations (C.F.R.) through July 1, 2008. These amendments are needed to maintain the state's authority under existing delegation agreements to administer the federal regulations and to ensure that Kansas Air Quality Regulations are current and consistent with federal requirements. No additional costs to the regulated community will result from these proposed amendments.

K.A.R. 28-19-735 adopts by reference the provisions of 40 C.F.R. Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP). The Part 61 hazardous air pollutant (HAP) regulations establish standards to limit the emissions of specific HAPs. The state's authority currently exists for the Part 61 rules promulgated through June 30, 2005.

K.A.R. 28-19-750 adopts by reference the provisions of 40 C.F.R. Part 63, NESHAP. Prior to the 1990 Clean Air Act Amendments (CAAA), section 112 of the Clean Air Act directed the EPA Administrator to identify HAPs for regulation. Under this, a limited number of



regulations were developed to address specific compounds originating in certain industries. In the 1990 CAAA, Congress established a list of HAPs for which the Administrator was to develop controls. These are now administered under 40 C.F.R. Part 63, which the state implements in K.A.R. 28-19-750. The state's authority currently exists for the 40 C.F.R. Part 63 rules promulgated through June 30, 2005.

K.A.R. 28-19-750a adopts by reference 40 C.F.R. Part 65, Consolidated Federal Air Rule, which consolidates different requirements for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) to enable easier compliance for facilities. Currently, the state's authority only exists for the 40 C.F.R. Part 65 rules promulgated through June 30, 2003.

The time period between the publication of this notice and the scheduled hearing constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulatory actions. All interested parties may submit written comments prior to 5:00 pm on the day of the hearing to Keith Weber, Kansas Department of Health and Environment, Bureau of Air, 1000 SW Jackson, Suite 310, Topeka, Kansas 66612, by fax to (785) 296-7455, or by e-mail to [kweber@kdheks.gov](mailto:kweber@kdheks.gov). All interested parties will be given a reasonable opportunity to present their views orally on the proposed regulatory actions during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to require each participant to limit any oral presentation to 5 minutes.

Copies of the proposed regulations, copies of the regulations under consideration for revocation, and complete economic impact and environmental benefit statements may be obtained from the Bureau of Air at KDHE by contacting Keith Weber at (785) 291-3278 or [kweber@kdheks.gov](mailto:kweber@kdheks.gov). Copies may also be viewed at the following locations:

- Department of Air Quality, Unified Government of Wyandotte County - Kansas City,

Kansas Health Department, 619 Ann Avenue, Kansas City, KS

- Johnson County Environmental Department, 11811 S. Sunset, Suite 2700, Olathe, KS
- Curtis State Office Building, 1000 SW Jackson St., Ste. 310, Topeka, KS
- KDHE Northeast District Office, 800 W. 24th St., Lawrence, KS
- KDHE Northwest District Office, 2301 E. 13th St., Hays, KS
- KDHE North Central District Office, 2501 Market Place Ste. D, Salina, KS
- KDHE South Central District Office, 130 S. Market, Ste. 6050, Wichita, KS
- KDHE Southeast District Office, 1500 W. 7th St., Chanute, KS
- KDHE Southwest District Office, 302 W. McArtor Rd., Dodge City, KS
- Wichita-Sedgwick County Dept. of Community Health, 1900 E. 9th St., Wichita, KS

The material is also available on the Bureau of Air's website at

[http://www.kdheks.gov/bar/public\\_notice.html](http://www.kdheks.gov/bar/public_notice.html). Questions pertaining to these proposed regulations should be directed to Keith Weber, (785) 291-3278.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and the economic impact and environmental benefit statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Keith Weber at (785) 291-3278.

Roderick L. Bremby

Secretary of Health and Environment

**ATTACHMENT 2**

**PUBLIC HEARING SIGN IN SHEET**

# SIGN-IN SHEET

Public Hearing - August 30, 2010

10:00 a.m., Room 530, Curtis State Office Building, Topeka, Kansas

Proposed Regulations to Amend	Name of Regulation
K.A.R. 28-19-202	Annual emissions fee
K.A.R. 28-19-517	Class I operating permits; annual emissions inventory
K.A.R. 28-19-720	New source performance standards
K.A.R. 28-19-735	National emission standards for hazardous air pollutants
K.A.R. 28-19-750	Hazardous air pollutants; maximum achievable control technology
K.A.R. 28-19-750a	Consolidated federal air regulations; synthetic organic chemical manufacturing industry

Proposed Regulations to Revoke	Name of Regulation
K.A.R. 28-19-728	Mercury. Definitions; measurements, abbreviations, and acronyms.
K.A.R. 28-19-728a	Mercury. Applicability.
K.A.R. 28-19-728b	Mercury. Emissions budget requirements; appeal procedure.
K.A.R. 28-19-728c	Mercury designated representative; permits.
K.A.R. 28-19-728d	Mercury allowance allocations.
K.A.R. 28-19-728e	Mercury. Allowance tracking system; retired unit exemption.
K.A.R. 28-19-728f	Mercury. Monitoring and reporting.

Name (please print)	Representing	Address	Verbal and/or Written Testimony?
1. Miles Stotts	KDHE - Bur. of Air	1000 SW Jackson Topeka KS 66612	Verbal & written
2. Keith Weber	KDHE - Bureau of Air	"	NONE
3. Mike Bootus	Jico Env. Doct	Oliver Drive 11811 S. Sunset Dr. Sunset Dr.	Verbal & written
4. Jimmy Nguyen	Frontier EL Dondo	1401 Douglas Rd.	None
5. Ken Peterson	KS Petroleum Council	806 SW Jackson Ste 1005 Topeka, KS 66612	NONE
6. George Thullesen	Empire Dist. Elect. Co.	PO Box 127 Joplin, Mo.	None
7. Melissa Weide	KDHE BOA	1000 SW Jackson Ste 310 Topeka KS 66612	None
8. Susan Vogel	KDHE	Secretary's Office	_____
9.			
10.			

**ATTACHMENT 3**

**BUREAU OF AIR TESTIMONY**

**Testimony for Public Hearing**  
**August 30, 2010**  
**Miles Stotts, Bureau of Air, KDHE**

Good morning, Madame Hearing Officer. I am Miles Stotts with the Bureau of Air at KDHE. The Bureau is proposing changes to the Kansas air quality regulations by amending six and revoking seven regulations.

**K.A.R. 28-19-202: Annual Emissions Fee**

K.A.R. 28-19-202 is the primary implementing regulation for the emissions fee program established by the Kansas Air Quality Act. The regulation was last amended on January 30, 2004, to increase the emissions fee from \$20 per ton to \$25 per ton starting in calendar year 2003. The Bureau is proposing to make four amendments to K.A.R. 28-19-202. The first of these is an increase in the emissions fee from \$25 per ton to \$37 per ton, starting with calendar year 2010. (this past January)

The federal Clean Air Act Amendments (CAAA) of 1990 require state permitting authorities to collect an annual emissions fee sufficient to cover all reasonable indirect and direct costs of developing and administering the permit program. The 1993 Kansas Legislature enacted K.S.A. 65-3024, authorizing KDHE to establish an emissions fee program to administer the Kansas Air Quality Act. Fees collected are deposited into the air quality fee fund in the State Treasury. The statute directs the Secretary of KDHE to adopt rules and regulations fixing emissions fees and to periodically increase or decrease the fees as necessary to cover the direct and indirect costs of administering the program. The presumptive fee established under the CAA was \$25 per ton, with annual adjustments tied to the consumer price index. Currently, the adjusted EPA presumptive fee has increased to \$43.83 per ton. States are allowed to collect lesser fees so long as their programs are adequately implemented. Kansas' proposed fee of \$37 per ton is lower than the federal presumptive fee and is also lower than other EPA Region 7 states: Missouri's fee is \$40 per ton, Nebraska's is \$62 per ton, and Iowa's is \$52 per ton. The purpose of this proposed amendment is to ensure that there are sufficient funds to operate the program.

The air quality fee fund is reviewed to forecast revenue and expenses. There is a great deal of uncertainty when projecting fund balances as a result of economic conditions, weather,



and the installation of pollution control equipment at large sources. Expenses have risen substantially since the last fee increase in 2004. The 2007 Legislature enacted K.S.A. 75-5673, requiring KDHE to establish a mercury deposition network across the state. The Bureau funded this using the air quality fee fund.

Income to the fee fund has declined substantially over the past few years. Actual emissions declined 11.6% from 2007 to 2008, and are projected to further decline approximately 9-13% from 2008 to 2011, and then level off beginning in 2012. Projections after fiscal year 2010 indicate that adequate resources to effectively implement the program will not be available without a fee increase. The proposed fee increase and the removal of class I thresholds potentially will result in a revenue increase of approximately \$1.3M for emissions year 2010. In conclusion, the proposed fee increase is needed due to decreased emissions as a result of a declining economy and better pollution controls, as well as the length of time since the last fee increase.

The second proposed amendment to K.A.R. 28-19-202 would remove the minimum thresholds for assessing emissions fees for class I stationary sources, starting with calendar year 2010. Currently, only Title V sources that emit greater than the major source thresholds pay emissions fees. There is substantially the same amount of work required for a class I source, regardless of whether the emissions are less than or greater than these thresholds. With the removal of the minimum thresholds, there will be approximately 130 to 160 class I sources that have not paid on emissions in the past that will be required to pay on emissions for 2010 and subsequent years. For 2008, 159 of 291 class I facilities did not owe any fee based on their emissions falling below the minimum thresholds. Most of these facilities were natural gas compressor stations, small power plants, or landfills. Facilities that did not owe fees in the past will pay an estimated total of \$379,620 in emissions fees, for an average of approximately \$2,388 per facility.

The third proposed amendment to K.A.R. 28-19-202 would change the late fee from the greater of \$10 per day or 0.05% per day, to the greater of \$20 per day or 0.10% per day.

The fourth proposed amendment to K.A.R. 28-19-202 would change the minimum overpayment amount qualifying for refund or credit, from a minimum of \$5 to the fee equivalent of one ton of emissions.

**K.A.R. 28-19-517: Annual Emissions Inventory**

The Bureau is proposing an amendment to the annual emissions inventory reporting date. On December 5, 2008, the EPA modified its requirements for collecting and reporting air emissions data in the Air Emissions Reporting Requirements rule. The most important change is the date by which KDHE must report emissions data to the EPA. The reporting date changed from 17 months following the end of the emissions year (same as calendar year) to 12 months following the end of the year. This new deadline shortens the Bureau's review and processing time by five months for the 2009 emissions year inventory. To meet the deadline, the Bureau is proposing to move the due date for emissions inventory fees and forms from June 1 to April 1. Surrounding states have all moved their reporting dates to April 1.

**K.A.R. 28-19-720: New Source Performance Standards**

In order for the State of Kansas to retain primary authority for air pollution control regulation, state regulations adopt certain federal rules. K.A.R. 28-19-720 implements the federal New Source Performance Standards (NSPS) provisions as state requirements under the Kansas Air Quality Act. The pollutants covered by the NSPS are the criteria pollutants - sulfur oxides, nitrogen oxides, ozone, particulate matter, lead, and carbon monoxide. Section 111 of the CAA directs the EPA to develop regulations implementing emissions standards for new stationary sources. The federal NSPS provisions are codified at 40 C.F.R. Part 60, and regulate new, modified or reconstructed facilities.

The proposed amendments will incorporate changes made to federal NSPS through July 1, 2008. The current adoptions by reference exist only for federal NSPS rules promulgated through June 30, 2005, and specific amendments to include the federal Clean Air Mercury Rule.

The amendments to 40 C.F.R. Part 60 being proposed for adoption by reference into K.A.R. 28-19-720 contain 60 subpart revisions within Part 60 that occurred between 2005 and 2008. The Bureau is proposing to not adopt 11 of the subpart revisions due to pending federal litigation and the vacatur of the Clean Air Mercury Rule.

**K.A.R. 28-19-735: National Emissions Standards for Hazardous Air Pollutants**

K.A.R. 28-19-735 adopts by reference and implements the National Emissions Standards for Hazardous Air Pollutants (NESHAP) of 40 C.F.R. Part 61, as state requirements under the Kansas Air Quality Act. The Part 61 regulations establish standards to limit the emissions of certain hazardous air pollutants, which are specifically-defined compounds or elements that cause serious health or adverse environmental effects.

The proposed amendments will adopt by reference the provisions of 40 C.F.R. Part 61, through July 1, 2008. The state's authority currently exists for the Part 61 rules promulgated through June 30, 2005. The proposed amendments are necessary to maintain the state's authority under existing delegation agreements to administer federal regulations and to ensure Kansas air quality regulations are consistent with federal requirements.

The amendments to 40 C.F.R. Part 61 being proposed for adoption by reference into K.A.R. 28-19-735 contain only one subpart revision within Part 61 that occurred between 2005 and 2008.

**K.A.R. 28-19-750: Hazardous Air Pollutants; Maximum Achievable Control Technology**

Hazardous Air Pollutants (HAPs) are regulated by 40 C.F.R. Part 63, which Kansas implements in K.A.R. 28-19-750, Hazardous Air Pollutants; Maximum Achievable Control Technology.

The proposed amendments will adopt by reference the provisions of 40 C.F.R. Part 63 through July 1, 2008. The state's authority currently exists for the Part 63 rules promulgated through June 30, 2005. The proposed amendments are necessary to maintain the state's authority under existing delegation agreements to administer federal regulations and to ensure Kansas air quality regulations are consistent with federal requirements.

The amendments to 40 C.F.R. Part 63 being proposed for adoption by reference into K.A.R. 28-19-750 contain 121 subpart revisions within Part 63 that occurred between 2005 and 2008. The Bureau is proposing to not adopt 5 of the subpart revisions due to pending federal litigation.

Some of the federal rules proposed to be adopted are more significant to Kansas sources, but most facilities have already complied or are in the process of doing so. KDHE's method for implementing these proposed regulations affecting small and medium sized businesses is on outreach to affected sources and trade associations, through our District Office staff, as well as the Kansas Small Business Environmental Assistance Program (SBEAP) at KSU. SBEAP is actively involved with workshops and technical assistance for small business.

**K.A.R. 28-19-750a: Consolidated Federal Air Rule**

K.A.R. 28-19-750a adopts by reference 40 C.F.R. Part 65, Consolidated Federal Air Rule, that consolidates different requirements applicable to the Synthetic Organic Chemical Manufacturing Industry (SOCMI). This rule emerged from a federal initiative to streamline the

compliance process for industry sectors affected by multiple rules. The Consolidated Federal Air Rule is a voluntary option for complying with the SOCMR requirements, but it does not alter the applicability of referencing subparts in 40 C.F.R. Parts 60, 61, and 63.

The proposed amendments will adopt by reference 40 C.F.R. Part 65, Consolidated Federal Air Rule, through July 1, 2008. Currently, the state's authority only exists for the Part 65 rules promulgated through June 30, 2003. The proposed amendments are necessary to maintain the state's authority under existing delegation agreements to administer federal regulations and to ensure Kansas air quality regulations are consistent with federal requirements.

The amendments to 40 C.F.R. Part 65 being proposed for adoption by reference into K.A.R. 28-19-750 contain 2 subpart revisions within Part 65 that occurred between 2003 and 2008.

**K.A.R. 28-19-728 through 28-19-728f: Mercury Emissions**

On February 8, 2008, the District of Columbia Circuit Court of Appeals vacated the EPA's mercury cap and trade rule, known as the Clean Air Mercury Rule (CAMR), and the associated NSPS. The Circuit Court found that the EPA's action to delist oil- and coal-fired electric generating units (EGUs) from the source categories to be regulated under section 112 of the CAA did not comply with the requirements of the statute. CAMR, which was promulgated under Section 111, was vacated because the court determined that EGUs must be regulated under CAA Section 112 standards. The vacatur was mandated on March 14, 2008, and the associated federal mercury rules are no longer effective. The proposed revocations of K.A.R. 28-19-728 through 28-19-728f will align the state's air quality regulations with the federal court action.

The department has provided copies of these proposed amendments and the Regulatory Impact Statements to the League of Kansas Municipalities, the Kansas Association of Counties, and the Kansas Association of School Boards. We also provided a copy of these rules to the US EPA, and an email was sent to every class I source – about 300 – explaining this proposed increase in fees and the change in the emissions inventory submittal date. That concludes my testimony. Thank you, Madame Hearing Officer.

## **ATTACHMENT 4**

### **WRITTEN COPIES OF ORAL COMMENTS PRESENTED DURING THE PUBLIC HEARING**

## **Public Hearing Testimony**

Johnson County Environmental Department, August 30, 2010

Proposed K.A.R. 28-19-202, Annual Emission Fee

Good morning. My name is Mike Boothe, and I am the Environmental Compliance Manager for Air Quality of the Johnson County Environmental Department. Our offices are located at 11811 S. Sunset Drive in Olathe, Kansas. The Environmental Department works in partnership with KDHE's Bureau of Air on air quality issues in Johnson County. The state contracts with us to inspect air contaminant sources for compliance with state air pollution regulations. I conduct inspections of the sources subject to air quality regulations within Johnson County. Today I am here to offer our full support for the proposed regulation K.A.R 28-19-202 which would increase emissions fees for Class I sources.

The Regulatory Impact Statement prepared by the Bureau of Air provides the history of emission fees since the beginning of the operating permit programs in the early 1990's. At that time, Kansas had the lowest emission fees in the EPA Region 7 states that include Missouri, Iowa, and Kansas. As you can see, Kansas has not had an increase in emission fees in nearly 7 years. Add to that that funding for compliance inspections has decreased over the years. These two circumstances stretch staff capabilities to their limits.

While current economic conditions have certainly affected many of the businesses in Johnson County and the rest of Kansas, the companies in my area have managed to remain productive and vital; and most of the business will not directly be affected by the proposed emission fee change. There are approximately 175 sources in Johnson County that are subject to air quality regulations. Of these, only 8 would be paying the proposed new fees.

Although the current economy may be down, air quality regulations still apply to those businesses that emit pollution in order to protect the public health. Add to that, the time spent on compliance inspections has not decreased. Quite the contrary, inspections for all sources, including Class I, have increased. More time is now spent during inspections educating source personnel about air quality and new permitting issues that affect the Kansas



City region. Even without the additional education, Class I sources have historically been the most complicated and time-consuming of all inspections.

Title V of the Clean Air Act Amendments of 1990 requires states to collect enough emission fee money from Class I sources to run the program. Even with this proposed increase, Kansas will still have the lowest fees in the region. The operating costs of an air quality program have increased in the last 7 years, although the fees have not. In spite of this decreased funding, The Kansas Bureau of Air, as well as the three local agencies in Wyandotte, Shawnee, and Johnson Counties, have maintained outstanding and professional service to our regulated community.

When EPA announces their decision to change the health-based standard for ground-level ozone, the Kansas City region is once again expected to be in violation of the standard and be designated as a non-attainment area. With this change, other portions of the state such as Sedgwick, Douglas, Leavenworth, and Shawnee Counties may also be designated as non-attainment areas. Even more energy will be needed to educate and regulate these communities to ensure compliance with the ozone standard and keep our Kansas communities healthy.

Air pollution potentially affects the health and well-being of everyone. The goal for air quality programs is to protect the health and well-being of our citizens. The proposed increase in emission fees would help provide adequate financial resources to operate the air quality programs of the State of Kansas as well as the local agencies. Johnson County offers its strong support for the fee increase as provided in the proposed change to K.A.R. 28-19-202.

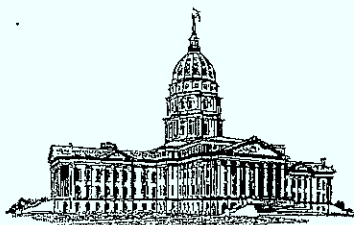
Thank you for the opportunity to testify.

Mike Boothe  
michael.boothe@jocogov.org  
Environmental Compliance Mgr-Air Quality  
11811 S. Sunset Dr.  
Suite 2700  
Olathe, KS 66061  
913-715-6939

**ATTACHMENT 5**

**WRITTEN COMMENTS SUBMITTED DURING THE PUBLIC  
COMMENT PERIOD, JUNE 17 TO AUGUST 30, 2010**

ALAN D. CONROY  
Director  
RANEY L. GILLILAND  
Assistant Director for Research  
J.G. SCOTT  
Chief Fiscal Analyst



STATE OF KANSAS

RECEIVED

AUG 27 2010

BUREAU OF AIR

STAFF

LEGISLATIVE COORDINATING COUNCIL

INTERIM COMMITTEES

STANDING COMMITTEES

LEGISLATIVE INQUIRIES

## KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 68-West — State Capitol Building — 300 SW Tenth Avenue — Topeka, Kansas 66612-1504

PHONE (785) 296-3181 ♦ FAX (785) 296-3824 ♦ TTY (785) 296-3677

INTERNET: <http://www.kslegislature.org/kldr> E-MAIL: [kslegres@kldr.ks.gov](mailto:kslegres@kldr.ks.gov)

August 20, 2010

Received

AUG 26 2010

RECEIVED DIRECTOR OF ENVIRONMENT  
DEPT. OF HEALTH & ENVIRONMENT

AUG 24 2010

SECRETARY OF  
DEPT. HEALTH & ENVIRONMENT

Mr. Roderick Bremby, Secretary  
Kansas Department of Health and Environment  
1000 SW Jackson, Suite 540  
BUILDING MAIL

Dear Secretary Bremby:

At its meeting on August 16, 2010, the Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning annual emissions fee; class I operating permits, annual emissions inventory; new source performance standards; national emission standards for hazardous air pollutants; hazardous air pollutants, maximum achievable control technology; consolidated federal air regulations, synthetic organic chemical manufacturing industry; and revocations. After discussion, the Committee had the following comments.

- Concern. The Committee's concern does not deal with the set of regulations presented at this time, but instead rests with the actions the agency may be forced to take in order to maintain state primacy in the area of air quality. The Committee wishes to express its concern about the federal Environmental Protection Agency (EPA) forcing standards upon states without the states having an ability to respond to unique situations. Nonetheless, the Committee encourages KDHE to continue to make the cases, for exemption, where appropriate, for regulations which may not apply to Kansas. Additionally, the members of the Committee are concerned about the extent to which EPA intends to regulate internal combustion engines and wonders how KDHE intends to find, test, and remediate all of the various engines being used within Kansas in order to comply with EPA requirements. Finally, the Committee encourages the staff of KDHE to continue to point out discrepancies and inaccuracies in EPA data which would result in even further detrimental impact to the regulated community in the state.

Prior to filing with the Secretary of State, review the history sections of the rules and regulations to update them to the most recent statutory citations, making certain the citations for authorizing and implementing statutes are correct and complete. Please indicate your agency's website address in the filing notice where proposed regulations can be located. In addition, if your agency accepts written comments by e-mail include this information in the public notice. Further, e-mail requests for public accommodation should be included as a part of the notice. Finally, verify that the adoption by reference of any materials included in the regulations is properly completed as

Secretary Bremby

- 2 -

prescribed in the *Policy and Procedure Manual for the Adoption of Kansas Administrative Regulations*.

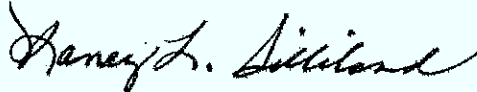
Please make this letter a part of the public record on these regulations. The Committee will review the regulations which the agency ultimately adopts, and reserves any expression of legislative concern to that review.

To assist in that final review:

- Please inform the Joint Committee and me, in writing, at the time the rules and regulations are adopted and filed with the Secretary of State, of any and all changes which have been made following the public hearing.
- Please notify the Joint Committee and me, in writing, when your agency has adopted the regulations as permanent; delayed implementation of the regulations; or decided not to adopt any of the regulations.
- Also, please indicate separately to the Joint Committee and me, any changes made to the proposed regulations reviewed by the Committee.

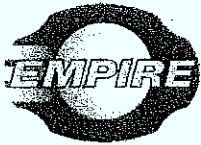
Based upon direction from the Committee, failure to respond to each and every comment contained in this letter may result in the request that a spokesperson from your agency appear before the Committee to explain the agency's failure to reply.

Sincerely,



Raney L. Gilliland  
Assistant Director for Research

RLGyl



SERVICES YOU COUNT ON

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JUL 29 2010

BUREAU OF AIR

July 27, 2010

Mr. Keith Weber  
Kansas Department of Health and Environment, Bureau of Air  
1000 S. W. Jackson, Suite 310  
Topeka, KS 66612

Re: Revocation of K.A.R. 28-19-728 through 28-19-728f – CAMR language.

Dear Mr. Weber:

The Empire District Electric Company (Empire District) appreciates the opportunity to comment on the Kansas Department of Health and Environment's (KDHE) proposed revocation of the sections of the Kansas Air Regulations which contain language referring to the Clean Air Mercury Rule (CAMR).

Empire District strongly supports the proposed revocations which will align Kansas air quality regulations with federal court action. Continuance of a portion of the regulation at the State level after the CAMR was vacated at the Federal level results in unnecessary expense to the tax payer in a time when all costs must be evaluated.

Also, revoking the CAMR related language from the Kansas Air Regulations will remove requirements dealing with CAMR in the Title V Air Operating Permit which makes compliance impossible. This action will alleviate the conflict that currently exists with KDHE's enforcement of these requirements.

We appreciate the actions taken by KDHE to correct the current Kansas regulation. Thank you for considering our comments.

Sincerely,

Rebecca Heffren  
Environmental Coordinator  
[rheffren@empiredistrict.com](mailto:rheffren@empiredistrict.com)  
(417)625-6152

Cc:File



PO BOX 127  
JOPLIN MISSOURI 64802

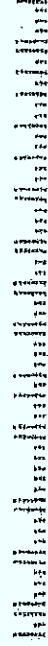
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Mr. Keith Weber



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US POSTAGE

Mr. Keith Weber  
Kansas Department of Health and Environment  
Bureau of Air  
1000 S. W. Jackson, suite 310  
Topeka, KS 66612

6661281066 0155





**Keith Weber**

---

**From:** Mike Price [mike\_price@hawkerbeechcraft.com]

**Sent:** Friday, July 16, 2010 1:20 PM

**To:** Keith Weber

Keith:

In regards to changing the date of the Annual Air Emissions Inventory; most engineers who prepare these reports also prepare Tier II and Form R reports. The earlier date will put a lot of undue pressure on businesses if they have to submit the AEI by April 1. A great deal of the TRI data interchanges with the AEI information, requiring businesses to complete a big section of the TRI report to get the AEI report completed. May 1 would be a much better date than April 1.

Not concerned about the price change for air pollution emission fees.

Thanks for your consideration.  
MP

**Michael Price**  
Sr. Environmental Engineer  
**Hawker Beechcraft Corporation**

9709 E. Central  
Wichita, Kansas  
67206 USA  
+1.316.676-5913  
+1.316.676-7889 fax  
[mike\\_price@hawkerbeechcraft.com](mailto:mike_price@hawkerbeechcraft.com)



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7/16/2010

## **ATTACHMENT 6**

### **RESPONSIVENESS SUMMARY**

## ATTACHMENT TO THE REPORT OF THE HEARING OFFICER

K.A.R. 28-19-202, 28-19-517, 28-19-720, 28-19-728, 28-19-728a through 28-19-728f,  
28-19-735, 28-19-750, 28-19-750a

### Final Amended Regulations

#### Legal Authorities

Kansas Statutes Annotated (K.S.A.) 65-3005, as amended, authorizes and directs the secretary to adopt such rules and regulations as necessary to enable the secretary to carry out the purpose and provisions of the Kansas Air Quality Act, K.S.A. 65-3001 *et seq.* and amendments thereto.

#### Responsiveness Summary

On August 30, 2010, a public hearing was held at 10:00 a.m. in Room 530 of the Curtis State Office Building in Topeka, Kansas. The purpose of the hearing was to consider adoption of amendments to six permanent air quality regulations and revocation of seven permanent air quality regulations. The regulations under consideration are summarized in the two tables below:

Proposed Regulations to Amend	Name of Regulation
K.A.R. 28-19-202	Annual emissions fee
K.A.R. 28-19-517	Class I operating permits; annual emissions inventory
K.A.R. 28-19-720	New source performance standards
K.A.R. 28-19-735	National emission standards for hazardous air pollutants
K.A.R. 28-19-750	Hazardous air pollutants; maximum achievable control technology
K.A.R. 28-19-750a	Consolidated federal air regulations; synthetic organic chemical manufacturing industry

Proposed Regulations to Revoke	Name of Regulation
K.A.R. 28-19-728	Mercury. Definitions; measurements, abbreviations, and acronyms.
K.A.R. 28-19-728a	Mercury. Applicability.
K.A.R. 28-19-728b	Mercury. Emissions budget requirements; appeal procedure.
K.A.R. 28-19-728c	Mercury designated representative; permits.
K.A.R. 28-19-728d	Mercury allowance allocations.
K.A.R. 28-19-728e	Mercury. Allowance tracking system; retired unit exemption.
K.A.R. 28-19-728f	Mercury. Monitoring and reporting.

The public comment period began with the publication of the Notice of Hearing on Proposed Administrative Regulations in the Kansas Register on June 17, 2010, and ended at the close of business on August 30, 2010. The organizations and people that submitted comments during the public comment period are summarized in the table below.

Organization	Name	Type of Comment
Joint Committee on Administrative Rules and Regulations	Raney L. Gilliland	Written
Empire District	Rebecca Heffren	Written
Hawker Beechcraft Corporation	Michael Price	Written
Johnson County Environmental Department	Mike Boothe	Verbal

- The Joint Committee on Administrative Rules and Regulations (JCARR) considered the proposed regulations at its meeting on August 16, 2010. KDHE received a comment letter from JCARR on August 24, 2010, which can be found in Attachment 5 of the Report of the Hearing Officer. JCARR's comment and KDHE's response follow.

**Comment:** "The Committee's concern does not deal with the set of regulations presented at this time, but instead rests with the actions the agency may be forced to take in order to maintain state primacy in the area of air quality. The Committee wishes to express its concern about the federal Environmental Protection Agency (EPA) forcing standards upon states without the states having an ability to respond to unique situations. Nonetheless, the Committee encourages KDHE to continue to make the cases, for exemption, where appropriate, for regulations which may not apply to Kansas. Additionally, the members of the Committee are concerned about the extent to which EPA intends to regulate internal combustion engines and wonders how KDHE intends to find, test, and remediate all of the various engines being used within Kansas in order to comply with EPA requirements. Finally, the Committee encourages the staff of KDHE to continue to point out discrepancies and inaccuracies in EPA data which would result in even further detrimental impact to the regulated community in the state."

**Response:** KDHE shares the Committee's concerns with respect to the increasing number and complexity of federal rules that subject smaller sources to air quality regulation, such as the recent revisions<sup>1</sup> to the National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.<sup>2</sup> Attached is a letter from Rick Brunetti to EPA Region 7 outlining the Bureau of Air's plans to implement these rules.

KDHE will rely on outreach and education to affected sources and trade organizations to foster an environment of voluntary compliance in Kansas. Methods of outreach may include the KDHE District Office staff, as well as the Kansas Small Business Environmental Assistance Program (SBEAP) at KSU. SBEAP is actively involved with workshops and technical assistance for small business.

As suggested by the Committee, the Bureau of Air will continue to point out discrepancies and inaccuracies in EPA data, as well as other problems with federal regulations that could

<sup>1</sup> 75 FR 51588

<sup>2</sup> Subpart ZZZZ of 40 CFR Part 63

adversely impact sources in Kansas. For example, the proposed federal Clean Air Transport Rule contains air pollution modeling data that is not current. The Bureau of Air is preparing a detailed comment letter to inform EPA of the deficiencies in the modeling assumptions and to request that the results be adjusted appropriately.

**Action:** No change was made to the proposed regulations as a result of this comment.

- A letter was received from Empire District on July 29, 2010, expressing support for the proposed revocation of K.A.R. 28-19-728 through 28-19-728f. A copy can be found in Attachment 5 of the Report of the Hearing Officer.

**Comment:** "Empire District strongly supports the proposed revocations which will align Kansas air quality regulations with federal court action. Continuance of a portion of the regulation at the State level after the CAMR was vacated at the Federal level results in unnecessary expense to the taxpayer in a time when all costs must be evaluated. Also, revoking the CAMR related language from the Kansas Air Regulations will remove requirements dealing with CAMR in the Title V Operating Permit which makes compliance impossible. This action will alleviate the conflict that currently exists with KDHE's enforcement of these requirements. We appreciate the actions taken by KDHE to correct the current Kansas regulation."

**Response:** KDHE agrees with this comment.

**Action:** No change was made to the proposed regulations as a result of this comment.

- An e-mail was received on July 16, 2010, from Michael Price, Senior Environmental Engineer at Hawker Beechcraft Corporation. The e-mail expressed concern for the accelerated air emissions inventory reporting deadline in the proposed amendment to K.A.R. 28-19-517. A copy of the e-mail can be found in Attachment 5 of the Report of the Hearing Officer.

**Comments:** "In regards to changing the date of the Annual Air Emissions Inventory; most engineers who prepare these reports also prepare Tier II and Form R reports. The earlier date will put a lot of undue pressure on businesses if they have to submit the AEI by April 1. A great deal of the TRI data interchanges with the AEI information, requiring businesses to complete a big section of the TRI report to get the AEI report completed. May 1 would be a much better date than April 1. Not concerned about the price change for air pollution emission fees."

**Response:** Since EPA moved up by 5 months the date by which KDHE must submit the Kansas emissions inventory to EPA, it is necessary that KDHE move up the deadline for Kansas sources to submit their emissions inventories to KDHE. This new deadline shortens the Bureau's review and processing time by five months for the 2009 emissions year inventory. To meet the deadline, the Bureau is proposing to move the due date for emissions inventory fees and forms from June 1 to April 1. KDHE recognizes the burden an accelerated air emissions inventory reporting deadline of April 1 may impose on Kansas sources. Surrounding states have all moved their reporting dates to April 1.

**Action:** No change was made to the proposed regulations as a result of this comment.

- Verbal comments were given during the public hearing by Mike Boothe, Environmental Compliance Manager for Air Quality for the Johnson County Environmental Department. Mr. Boothe provided a written copy of his verbal comments that can be found in Attachment 4 of the Report of the Hearing Officer.

**Comments:** The comments were in favor of the proposed amendments to K.A.R. 28-19-202.

**Response:** KDHE agrees with the comments.

**Action:** No change was made to the proposed regulations as a result of this comment.



Mark Parkinson Governor  
Roderick L. Bremby Secretary

DEPARTMENT OF HEALTH  
AND ENVIRONMENT

[www.kdheks.gov](http://www.kdheks.gov)

September 15, 2009

Joshua A. Tapp  
Branch Chief  
Air Planning and Development Branch  
Air and Waste Management Division  
United States Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Dear Mr. Tapp:

Recently you received for review our draft proposed rules which will adopt all of EPA's final NESHAP and MACT rules between July 1, 2005 and June 30, 2008 with a few exceptions for pending litigation. These draft proposed rules include the area source MACT standards finalized during that timeframe. However, the implementation of regulations for certain area source MACTs gives us serious concern because there has been no increase in resources to state or local agencies from EPA to support this new regulatory effort.

As you know, several states have not accepted delegation of certain area source MACT standards because they are perceived to represent an unfunded mandate by EPA to the States. Kansas air emissions at hundreds, perhaps over a thousand facilities at mostly small to very small businesses will be newly regulated by these regulations. These include certain gas stations and bulk terminals, spray painting and furniture stripping operations, dry cleaners, hospital sterilizers, and certain reciprocating internal combustion engines.

The purpose of this letter is to be clear that our moving forward with the adoption of these MACT standards will require a different regulatory approach than EPA and KDHE traditionally utilize. The large number and the relatively small amount of emissions from these area sources lead us to carefully consider the proper type and level of effort required to regulate these sources. Resources to approve and/or inspect all regulated area sources simply do not exist. Alternative methods, including randomized inspections, complaint investigations, and aggressive outreach and education efforts will be required as not all facilities can be inspected or permitted. The Bureau of Air and the District Offices will use enforcement when necessary, but alternatives will be needed due to the diverse nature and large number of these sources. Outreach and coordination with other KDHE bureaus, state agencies, trade groups, labor associations, and academia will help to implement the area source rules. The KSU SBEAP has been very successful in educating small business in Kansas, and we anticipate that their efforts will continue and be enhanced even more with respect to area sources.

BUREAU OF AIR  
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 310, TOPEKA, KS 66612-1367  
Voice: 785.296.6024 Fax: 785.296.7455



Further, the Bureau has been working on revisions to the Kansas permitting rules for quite some time. Unfortunately, that effort was temporarily stalled in the wake of climate change issues, budget reductions, and resource limitations; however, we are recommitted to complete that effort. The revisions to both construction and permitting regulations will retain the vigor and focus of our major source permitting program and will afford flexibility for both permittees and reviewers alike. We believe that, for area sources that are minor and have no other regulatory requirements, timely and proper submittal of the initial notification required by the MACT standard could suffice as the basis for an 'approval by registration'.

As my staff has indicated in conversations with Region 7 staff and as contained in our work plan commitments, we will continue to review new MACT and NSPS standards. We will adopt federal rules commensurate with the level of resources that Kansas and EPA can dedicate to this potentially large regulated community. Please feel free to contact me to discuss this further.

Sincerely,



Rick Brunetti  
Director, Bureau of Air

cc John Mitchell DOE  
Gina Grier EPA R 7  
Leo Henning BEFS Topeka  
April Dixon BEFS Topeka  
District Environmental Administrators  
Vic Cooper  
Tom Gross  
Marian Massoth